

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

**Clerk's Minutes
Before the Honorable James O. Browning**

CASE NO. CR 19-77 JB

DATE: July 26, 2019

TITLE: *USA v. Michael Nissen*

COURTROOM CLERK: C. Bevel

COURT REPORTER: J. Bean

COURT IN SESSION: 10:49AM-11:58AM

TOTAL TIME: 1 HR 09 MIN

TYPE OF PROCEEDING: [24](#) MOTION to Dismiss for Lack of Jurisdiction , [25](#) MOTION to Dismiss *Indictment*. Pretrial Conference.

COURT RULING: Court denies will not rule on 24 Motion to Dismiss for Lack of Jurisdiction, Court denies 25, Motion to Dismiss Indictment

ATTORNEYS PRESENT FOR PLAINTIFF(S):

Paul Mysliwec

ATTORNEYS PRESENT FOR DEFENDANT(S):

Jack Mkhitarian, Kenneth Gleria

PROCEEDINGS:

10:49am Court in session, counsel enters appearances, defendant present in custody.

10:49am Mr. Mkhitarian addresses Motion 24, does not wish to argue now, defendant has received some discovery regarding charges indictment.

10:52am Mr. Mysliwec responds.

10:56am Court can say there is no challenge to the jurisdiction at this time. Court will convert to a motion for directed verdict.

10:56am Mr. Mysliwec responds, may wish to file further briefing matter, accepts court's direction to consider as a motion for directed verdict.

11:00am Court turns to [25](#) MOTION to Dismiss *Indictment*.

11:01am Mr. Mkhitarian indicates matter not yet ready for decision.

11:09am Mr. Mysliwec responds.

11:11am Court will deny Motion to Dismiss Indictment, Doc. 25. Counsel can address it again at the time for motions for directed verdicts.

11:13am Court granted Motion to continue trial to August 5, granted 12 days, did not see justification for continuance of 14 days and starting trial in the middle of the week.

11:15am Mr. Mysliwiec responds. Has other hearing, but could move them.

11:15am Mr. Mkhitarian and Mr. Gleria indicate they wish to begin August 6th, believe trial will be 2 days.

11:16am Mr. Mysliwiec requests jury selection begin at 1:30.

11:17am Court concerned with beginning in the afternoon. Court requests counsel refile motion and request one additional day.

11:18am Court will inform jury that this is a 2 day trial, and ask about their schedule on 6th and 7th. Counsel to be here at 8:30, jury present at 9:00am.

Closings after jury is instructed.

Court to prepare preliminary instructions, to be provided to counsel, will include note taking by jury.

Questions by jury are fine.

11:26am Court addresses counsel regarding jury instructions.

11:27am Mr. Mkhitarian responds.

Court will set 14 – 2 alternates. Alternates to be kept under charge.

Court will run traditional schedule. 8:30, lunch break and see how things are going by end of the day.

Opening statements at beginning: Government: 15 minutes, defendant 15 minutes

Voir Dire: Government 20 minutes, defendant 20 minutes.

Closing statements: Government 20 minutes, 20-40 minutes

Court puts burden on everyone to ensure that defendant is present in courtroom prior to bringing jury in. USMS does not see any issues regarding defendant being unrestrained during trial but will verify with supervisor.

Exhibits: Deadline for filing: July 31, objections by Friday August 2nd. Government numbers, defendant letters.

Witnesses: deadline same as for exhibits.

No issues on discovery at this time. No evidentiary issues at this time.

Jury instructions sent to defendant by 31st, any that cannot be agreed to by Friday 2nd.

11:41am Court imposes deadline of August 1 for any more Motions in Limine, responses by Friday August 2nd.

11:42am Mr. Mysliwiec indicates no Daubert issues unless T-Mobile records become issues. Mr. Mkhitarian agrees.

11:46am Court can have hearing in the afternoon of August 5 if necessary.

11:46am Court indicates northern part of state for jury pool. Case description will be indictment. Proposed voir dire, end of business on 31st, objections by Friday 2nd.

11:50am Court will use JERS for evidence presentation.

11:53am Mr. Mysliwiec addresses Court regarding defendant's participation in bench conferences.

11:53am Court indicates typically does not happen, unless counsel get back this Court and brief issue.

11:55am Court can pre-admit exhibits prior to trial so counsel can use during openings, if counsel agree.

11:58am Counsel have nothing further.

11:58am Court in recess.